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 14 SAN BERNARDINO; CORY  
 15 MCCARTHY, ANDREW POLLICK;  
 16 DAVID MOORE, and CRISTINA  
 17 OLIVAS

18 **UNITED STATES DISTRICT COURT**  
 19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 A.J.P. and A.M.P., minors by and  
 21 through their guardian ad litem Cynthia  
 22 Nunez, individually and as successor in  
 23 interest to Albert Perez, deceased; and  
 24 PATRICIA RUIZ, individually,

25 Plaintiffs,

26 v.

27 COUNTY OF SAN BERNARDINO;  
 28 and DOES 1-10, Inclusive,

Defendant.

Case No. 5:22-CV-01291 SSS (SHKx)

*[Honorable Sunshine Suzanne Sykes,  
 Magistrate Judge, Shashi H.  
 Kewalramani]*

**DECLARATION OF CORPORAL  
 CORY MCCARTHY IN SUPPORT  
 OF DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT**

***Filed concurrently with:***

1. Notice of Motion and Motion;
2. Statement of Uncontroverted Facts;
3. Declaration of Kayleigh Andersen;
4. Declaration of Sergeant Gaytan;
5. Declaration of Corporal Olivas;
6. Declaration of Corporal Pollick;
7. Declaration of Deputy Moore;
8. Declaration of Deputy Stone;
9. Declaration of Sergeant Scalise;
- and
10. [Proposed] Order

Date: April 19, 2024

Time: 2:00 p.m.

Crtrm.: Courtroom 2, 2nd Floor

Action Filed: 07/22/2022

**DECLARATION OF CORPORAL CORY MCCARTHY**

I, **Corporal Cory McCarthy**, declare as follows:

1. I am a party to this action. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On Sunday, August 29, 2021, at approximately 1900 on I received a text message from Sergeant Luke Gaytan requesting all members of the San Bernardino County Sheriff's Department Specialized Enforcement Division Team 1 ("SED Team") to respond to Zenda Street in Victorville for a barricade situation where the subject had threatened a female with a firearm, and that the subject was barricaded in the garage of a multi-unit complex where he did not live.

3. Sergeant Gaytan also notified the SED Team that a crisis negotiator, Negotiator Anthony Alcala, was also responding to the incident location.

4. Sergeant Gaytan had all members of the SED Team, which included Sergeant Gaytan, Corporal Pollick, Deputy Stone, Deputy Moore, Corporal Olivas, Corporal Gary, and myself, meet at the Victorville Library just west of the incident location for a briefing prior to arriving at the subject location.

5. During this briefing, the SED team learned that patrol was negotiating with the suspect, Albert Perez ("Perez"), who was seated on a stool at the rear of the garage behind a pool table and was in possession of a gun.

6. The SED Team also learned that the door from the garage to the home had been locked by the homeowner, and that both sides of the garage were contained with patrol units and they were trying to de-escalate the situation and trying to convince him to surrender peacefully, but that he was refusing to put the gun down.

7. During this briefing, the SED Team also developed an operational plan, which included medical plans and gas plans before going to the incident location.

1           8.     The SED Team's medical plan included requesting Victorville Fire  
2 Department, American Medical Response, and air rescue, the sheriff's helicopter, to  
3 be on standby in the event that there was a medical emergency. The BearCat and  
4 Corporal Olivas' vehicles were set up as medical extract vehicles. Additionally,  
5 several patrol vehicles, fire, and AMR were staged to respond to the incident location  
6 should the need arise.

7           9.     The SED Team's gas plans included Corporal Pollick and Deputy Moore  
8 having chemical agents should the need and opportunity to use them arise, and  
9 Corporal Pollick developed a chemical agent plan for the house. The Team developed  
10 numerous less lethal plans to be used at the appropriate point if the opportunity  
11 presented itself.

12          10.    The SED Team's operational plan included containing both sides of the  
13 garage with Olivas, Stone, and I to be positioned on the southeast corner of the garage,  
14 with Corporal Olivas with a shield and her pistol, I would be behind Corporal Olivas  
15 with lethal cover, and Deputy Stone with a less lethal 40 mm multi-launcher. On the  
16 other side, Deputy Moore, Corporal Pollick, and Sergeant Gaytan were to be  
17 positioned on the southwest corner of the garage, with Deputy Moore with a shield  
18 and his pistol, Sergeant Gaytan with a less lethal launcher, and Corporal Pollick held  
19 lethal cover.

20          11.    Additionally, the SED Team was going to position the BearCat, which  
21 is an armored vehicle, in the driveway of the garage and face it towards the garage to  
22 use the light to light up the garage because it was getting dark.

23          12.    Sergeant Gaytan made it clear to the SED Team that if the suspect was  
24 to separate himself from the firearm, the team could not allow him to gain access back  
25 to that firearm because we did not want him to be able to shoot at us or any members  
26 of the public.

27          13.    During the briefing, the SED team learned that there was a family who  
28 stayed in their home in the northwest corner of the multi-unit complex. The SED

1 Team made contact with the family, and the family decided to stay in the home as  
2 there was an elderly female at the home, and the team advised the family to shelter in  
3 place.

4 14. Prior to the incident, we also received photos of Perez sitting on a stool  
5 in the garage via text message, which were taken when members of patrol and  
6 Negotiator Alcala were on scene attempting to gain Perez's compliance before the  
7 SED Team took our positions. Attached as Exhibit "K" to this Declaration are true  
8 and correct copies of photos I received via text message on August 29, 2021, that  
9 capture Perez in the garage while members of patrol were on scene.

10 15. The SED team arrived to the incident location with the BearCat and met  
11 with the patrol sergeant to gain additional information. The SED team learned that  
12 Perez was kind of nodding off, he was kind of lucid, and that it was unclear if he was  
13 under the influence of any narcotics or alcohol.

14 16. Due to the patrol deputies being fatigued after hours of negotiations and  
15 attempts to gain compliance from Perez, the SED Team took over and took their  
16 assigned positions on the corners of the garage as was discussed in briefing. Before  
17 the lethal force encounter, I changed positions from the side of the garage to the  
18 BearCat in the driveway so that I could have a different vantage point to see Perez in  
19 the garage.

20 17. During the incident, Negotiator Alcala was the assigned crisis negotiator  
21 and attempted numerous times to make contact with Perez and gain his compliance.  
22 Once Perez started to move towards the front of the garage where the SED Team was  
23 waiting, Sergeant Gaytan started to give him commands so that we could safely take  
24 him into custody.

25 18. Since the academy, I was trained in accordance with San Bernardino  
26 County Sheriff's Department Policy 3.608 The Use of Lethal Force that the use of  
27 lethal force is justified to protect myself or others from what I reasonably believe to  
28 be an immediate threat of death or serious bodily injury.

Executed on this 26th day of February, 2024, at San Bernardino, California.

  
Corporal Cory McCarthy

**Exhibit “K”**





**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On March 1, 2024, I served true copies of the following document(s) described as **DECLARATION OF CORPORAL CORY MCCARTHY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

**LAW OFFICES OF DALE K. GALIPO**

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*ATTORNEYS FOR PLAINTIFFS, A.J.P.,  
AND A.M.P.. ET AL.*

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 1, 2024, at Los Angeles, California.

*Maria T. Castro*

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Maria T. Castro